

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4716 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMLAL G JOSHI

Versus

AMRELI NAGARPALIKA & ORS.

Appearance:

MR PM RAVAL for Petitioner

MR ND NANAVATI for Respondents No. 1, 3

MR NN PANDYA for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 02/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner was appointed as daily wager clerk in the office of respondent No.1 in the month of February 1984. On 7th March 1984 the petitioner was given temporary appointment against the leave vacancy. Again leave vacancy has occurred during the promotion of one of the incumbents thereof in the said office and the petitioner

was given appointment under the order dated 31st May 1984. This appointment was given to the petitioner purely on temporary basis without any selection and was approved by the Board in its general meeting vide Resolution No.68. This Resolution of the Board has been challenged by one Shri Gokaldas Madhavji Gandhi before the Collector of the District concerned. Under the order dated 6th September 1984, the said Resolution has been cancelled by the Collector. After cancellation of the said order, the petitioner was terminated from services. Hence this petition before this Court.

2. The learned counsel for the petitioner contended that the Collector has committed serious illegality by cancelling the said Resolution of the Board dated 29th July 1984. The learned counsel for the petitioner further contended that it is a case where the appointment of the petitioner has been approved by the Board and as such, the Collector has no power to cancel the said Resolution. On the other hand, the learned counsel for the respondent contended that the Resolution passed was ex-facie illegal and arbitrary. The petitioner was given appointment on adhoc temporary basis against leave vacancy. It is a case where the petitioner was not given any regular appointment. The petitioner's appointment was itself bad and as such, no illegality has been committed by the Collector, cancelling the said Resolution. I have given my thoughtful consideration to the contentions of learned counsel for parties.

3. The appointment of the petitioner was admittedly an adhoc temporary against the leave vacancy. It is not the case of the petitioner that this appointment has been made by the respondent Board after making selection and following the procedure laid down for making regular recruitment on the said post. It was the appointment which may be termed to be 'back-door entry'. The petitioner was given, from time to time, temporary appointments against leave vacancies, may be on his own application. When the appointment of the petitioner was itself bad, he has no right to get the appointment regularised which was made on adhoc temporary basis without following any procedure of recruitment.

4. In view of these facts, the Collector has committed no illegality whatsoever in cancelling the said Resolution of the Board. None of the legal and fundamental rights of the petitioners is infringed. The petitioner cannot be allowed to continue on the post on the basis of appointment which has been made against the vacancy caused due to promotion of the incumbent of the

said post. This Court can only protect the appointments which have been made legally after following the recruitment procedure and not the appointments which have been made by back-door entries. The counsel for the petitioner fails to make out any right of the petitioner to hold the post on which he was given adhoc or temporary appointment.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. No order as to costs.

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(sunil)